IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3927 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3927 of 1998

MR PV HATHI for Petitioners

MS REETA CHANDARANA, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 14/09/2004

ORAL JUDGEMENT

In this petition, the petitioners have challenged the action of the respondents in not accepting the

options of the petitioners for being absorbed in the Horticulture Department.

2. Short facts leading to the present petition are that both the petitioners were working in the Directorate of Agriculture on permanent basis when the Directorate of Agriculture was bifurcated and new Directorate of Horticulture was created in March 1991. By circular dated 22nd March 1991, options were called for from those Government servants who were allocated to Horticulture Department whether they would want to be absorbed in the said Department or not. The said options were to be exercised within a period of six months from the date of the circular dated 22nd March 1991, i.e. latest by 21st September 1991. It is not in dispute that the time for exercising the options was thereafter extended upto 30th November 1991 and thereafter once again upto 31st July 1992. It is also not in dispute that after 31st July 1992, there was no further extension of time for exercising the option as mentioned above. It is also not in dispute that both the petitioners were allocated to the Directorate of Horticulture. The petitioners have contended in the petition that petitioner No.1 gave his option for being absorbed in the Horticulture Department on 28.4.92 whereas petitioner No.2 gave such an option on 20.4.92. Admittedly, both these options were tendered by the petitioners to their parent department i.e. Directorate of Agriculture. It is the case of the petitioners that though they had forwarded their options as early as in April 1992, the respondents did not accept the same. The petitioners have contended that they fulfill the conditions required for being absorbed in the Directorate of Horticulture and the refusal on the part of the respondents to accept their options is illegal and unlawful. The petitioners have also pointed out that by letter dated 12th September 1994, the Director of Horticulture had recommended that those employees who are discharging their duties in the Directorate of Horticulture and are willing to be absorbed permanently, should be absorbed in the Directorate as they are discharging their duties with enthusiasm. The petitioners have also produced a letter dated 12th October 1994 by which even the Director of Agriculture has indicated that such employees should be absorbed in the Directorate of Horticulture.

3. The petitioners have specifically contended that by letter dated 3rd August 1992, the Director of Agriculture had submitted a list of employees who had opted for being absorbed in the Directorate of Horticulture and that therefore the petitioners were

under reasonable belief that they would be absorbed in the Directorate of Horticulture in due course of time.

4. The respondents have filed affidavit in reply dated 3rd September 1998 in which it is contended, inter alia, that the petitioners never gave their options to the Directorate of Horticulture before the last date for exercising such options i.e. before 31st July 1992. In the reply, however, it is not denied that the petitioners had actually given their options on 28th April 1992 and 20th April 1992 respectively and routed the same through their parent department which is Directorate of Agriculture. It is also not denied that the options were forwarded by the Director of Agriculture with his letter dated 3rd August 1992. The only argument that is advanced appears to be that such option forms were not given to the Director of Horticulture.

5. It is true that the circular dated 22nd March 1991 provides that the employees should exercise their options within the time frame and indicate their willingness to the Directorate of Horticulture. Simply because the petitioners have routed their options through their parent department, that too, well in time, before the expiry of the last date, can the petitioners be denied the benefits of the Government Circular, is the question which is required to be considered.

6. As stated above, the factual aspects arising in the petition are more or less undisputed. It is not in dispute that at the relevant time, the petitioners were allocated and were actually working in the Directorate of Horticulture. It is not in dispute that pursuant to the various circulars of the Government, the petitioners have indicated their desire for being absorbed in the Directorate of Horticulture by their letters dated 28th April 1992 and 20th April 1992 respectively. It is also not in dispute that these letters were written to the Directorate of Agriculture, who in turn forwarded the same to the Directorate of Horticulture and the State Government on 3rd August 1992. When the petitioners have given their option well in time, if the parent Department of Directorate of Agriculture consumes substantial time and forward the same only days after the last date for exercising such options was lapsed, can the petitioners be blamed for such a situation and can the petitioners be denied the benefits of such circular on such a technical ground when the Director of Agriculture itself was, if at all, responsible for crossing the dead-line to give options before 31st July 1992 ?

7. In my view, it would be unjust and improper to deny the petitioner the benefits of absorption in the Directorate of Horticulture only on the ground that the petitioners did not forward their applications to the Directorate of Horticulture before the last date of 31st July 1992. When the petitioners had clearly indicated such options through their letters dated 28th April 1992 and 20th April 1992 respectively and routed the same through their parent department, simply because the Directorate of Agriculture did not forward the same till 3rd August 1992 cannot be utilised against the petitioners to deny the benefits of the circular.

8. In this view of the matter, the stand of the respondents cannot be accepted. The petitioners are entitled to the relief to the effect that their options should be treated to have been exercised within the time permitted by the Government and all consequential effect thereof must flow.

9. In the result, the action of the respondents in treating the options of the petitioners as belated and having been exercised beyond the time limit is quashed. The respondents are directed to treat the options of the petitioners dated 28th April 1992 and 20th April 1992 as at Annexure E and E/1 respectively as having been exercised within the time prescribed by the Government by circulars issued from time to time and the respondents are directed to consider and take decision on the options of the petitioners ignoring the stand that the same were not received within the permitted time limit. Such an exercise shall be completed within two months from the date of receipt of a copy of this order and the decision thereon shall be communicated to the petitioners as early as possible thereafter.

10. In the result, the petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)